

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.500 OF 1989

Shri Raosaheb Anand Shinde
57 years, Occ.Service,
Residing at Tasgaon, [C.T.S.](#)
No.1553, Somwar Peth, Tasgaon
Dist. Sangli. .. Appellant

Versus

The State of Maharashtra
Notice to be served upon
the Government Pleader,
High court, Appellate Side
Bombay. .. Respondent

[Mr.P.L.Naik](#) for Appellant's

[Mrs.G.P.Mulekar](#), AGP for Respondent

CORAM : [P.V.KAKADE](#), J.

DATE : 22nd SEPTEMBER, 2005.

ORAL JUDGMENT:

1. The Appellant has preferred this Appeal against the Judgment and Order passed by Addl. District Judge Sangli dated 18.8.1989 dismissing the Appeal and confirming the Judgment and Order passed by Civil Judge, Junior Division, Sangli dated 30.12.1982 dismissing the Plaintiff's suit for declaration and injunction against the State.

2. One Anand Krishna Shinde, father of the present Plaintiff, died on 8.3.1980. He held agricultural land bearing [R.S.No.422](#), which was situated at village Kupwad, Taluka Miraj, District Sangli as an owner subject to restrain regarding impartibility. The deceased Ananda bequeathed the suit land to the present plaintiff under his Will. Therefore, the Plaintiff acquired title thereto on the death of his father Ananda. The deceased Ananda sought permission for changing the tenure of the suit land in 1965. The land was Class II Inam land as contemplated under Section 29 of the Maharashtra Land Revenue Code. He then transferred the portion of the suit land to various parties upto 1968. In 1978 the permission for [N.A.was](#) canceled by the Revenue Commissioner, Pune. He was further directed to

seek waiver of restrictions regarding impartibility in order to seek permission for changing the tenures. However, he could not seek waiver of the said restrictions because of the inability to pay the necessary compensation. Subsequently he executed an agreement of sale for transferring of the suit land to one Shetkari Sahakari Sakhar Karkhana Ltd. And delivered the possession thereof towards part performance of the contract on 19.10.1975. Without taking into consideration the aforesaid facts, the Tahsildar, Miraj issued a notice for eviction on 21.7.1980 and allegedly prepared bogus Possession Receipt dated 5.8.1980. The plaintiff came to know about the same after noticing the mutation made with regard to the suit property in record of rights. Consequently, he sued the defendant for declaration about nullity of the impugned possession receipt dated 5.8.1980 and consequently relief of permanent injunction to restrain the defendant from transferring his title to the suit land in any manner after service of statutory notice.

The Defendant-State contested the suit, inter alia, denying the allegations made by the plaintiff. It was submitted that the deceased Anand had committed breach of the conditions of the agreement under which the land Class II Inam was given to him, and therefore, proceeding regarding eviction from the suit land was necessitated. According to the State, it had followed the due process of law for seeking possession of the suit land, which was vested in the State since 5.8.1980. It was a case of the Defendant-State that the Plaintiff has not acquired title to the suit land under the alleged Will and on such and other grounds the suit was sought to be dismissed.

3. The learned trial judge adjudicated the dispute on the basis of available evidence and came to the conclusion that though the Will of deceased Anand was proved, the plaintiff failed to prove that possession receipt dated 5.8.1980 was bogus and illegal. It was further held that the plaintiff failed to prove that possession of the property was not taken by the defendant-State and that he had fulfilled the conditions of the

order of the Asstt. Collector passed Order LAN/SR-132 dated 17.11.1965 under which the land was alienated to him. Finally it was held that the plaintiff was not entitled to the reliefs for declaration and consequential injunction and as such the suit came to be dismissed. The Appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties upheld the findings recorded by the trial court but concluded that the Possession Receipt dated 5.8.1980 was illegal and ultravires to the provisions of the Maharashtra Land Revenue Code, but held that plaintiff was not entitled for relief of declaration as well as injunction and as such the appeal came to be dismissed. Hence the present appeal.

4 I heard the learned Counsel for both the parties. Perused the entire record including the judgments of both the courts below.

5. At the outset it may be noted that the admission Court, at the time of admitting the appeal, has formulated the substantial question of law to the effect that whether the appellant's

proprietary right could be affected in any manner purported to be done by the Officers of the State Government and whether the Appellant was legally entitled to the relief claimed by him?

. In this regard Mr. Naik, the learned counsel for the appellant vehemently urged that once the appellate court had come to the conclusion that the Possession Receipt dated 5.2.1980 was illegal and ultravires, then under such situation the appeal could not be dismissed by taking resort to Section 34 of the Specific Reliefs Act and the reliefs claimed by the Appellant-Plaintiff were required to be granted. The Judgment of the Lower Appellate Court shows that the Possession Receipt was held illegal on the ground that it was issued by Tahsildar of the concerned Village and not by the Collector of the District, which according to the learned Lower Appellate Court, was necessary in view of the provisions of Section 53 of the Maharashtra Land Revenue Code, 1966 and therefore, it was concluded that the Possession Receipt executed by Tahsildar was illegal.

6. The learned counsel for the Appellant further submitted that the suit land was held by the Appellant after the death of his father, which was Class II Inam land and the Appellant was entitled to use and occupation of the land in perpetuity conditionally on payment of amount due on account of land revenue as provided under Section 37 of the Maharashtra Land Revenue Code. The occupancy right held in perpetuity could not be terminated or interfered with by the officers of the State Government without following proper procedure.

7. The entire state of affairs, as revealed from the evidence on record, reveals a quite different story. It is true that the suit property was Class II Inam land and occupant was given the said land under Section 29 of the Maharashtra Land Revenue Code. Section 29(3) of the Code stipulates that the occupant Class II shall consist of persons, who held unalienated land in perpetuity subject to restriction on the right to transfer. In the present case N.A. permission was granted on 17.11.1965 to the appellant on certain conditions, such as non

agricultural use shall be started within six months, failing which the permission would stand cancelled. Admitted, the N.A. Permission was not obtained and consequently by Order dated 30.1.1968 N.A. permission came to be cancelled vide Exh.46. During this period the father of the Appellant executed about 20 agreement to sale. Several suits were filed against the father of the appellant, some of which were dismissed and some of them were compromised. Thus, the condition of impartibility attached to the tenure was breached by the father of the appellant. Therefore, from the order of resumption land vested in the Government and the fact that the land resumed to the Government had attained finality.

8. On 9.10.1975 the Appellant entered into an agreement to sale (Ex.64) with Sakhar Karkhana. It is sated in para 7 of the Plaint that the possession of the entire land was given to the Sakhar Karkhana by way of part performance of the agreement to sale. If it is admitted position, then it is clear that according to the Appellant, he was not in possession of the suit

land since 9.10.1975 and therefore, in this situation the appellant cannot be said to be aggrieved party because of taking of possession of the Suit land by the State of Maharashtra. In other words, at the most the Sakhar Karkhana who according to the appellant, has lost the possession should be an aggrieved party. The party who is not in a possession cannot be aggrieved by Possession Receipt dated 5.8.1980. By way of Mutation Entry No.9138 the name of the Government was entered and it is pertinent to note that Sakhar Karkhana is not made party to the suit.

9. The record further shows that the notice under Section 53(2) of Maharashtra Land Revenue Code (Exh.45) was served on the appellant. The appellant replied the same on 30.7.1980 and after considering his reply the Possession Receipt dated 5.8.1980 is seen to be executed. It is to be noted that there is no provision under the Maharashtra Land Revenue Code, which provides for giving personal hearing.

10. On this background, let us now turn to the issue involved to the effect that if the Possession Receipt is rendered illegal, because it is not issued by the Collector of the District. Firstly, it must be noted that Tahsildar has acted under his delegated powers which are derived from the Notification dated 14.8.1967 having No.UNF 1467(e)-(R), which is about delegation of the powers by which the powers of Collector are delegated to the Tahsildar and it includes the powers under Section 52(2) and 52(1-A) of the Maharashtra Land Revenue Code. This notification is issued by the State under Section 13 of the Maharashtra Land Revenue Code, and therefore, it is totally incorrect finding recorded by the lower appellate court that the notice issued by Tahsildar was without powers, and therefore, illegal. It was submitted on behalf of the appellant that the State had not filed cross objection against the findings recorded by the lower appellate court to the effect that Possession Receipt was illegal and therefore, that issue cannot be considered in this appeal. In that regard we must note the provision of Order 41 Rule 33 of C.P.C. The Rule

confers a wide discretionary power on the appellate court to pass such decree or order as ought to have been passed or as the nature of the case may require, notwithstanding the fact that the appeal is only with regard to the part of the decree or that the party in whose favour the power is proposed to be exercised has not filed any appeal or cross objection. Time and again it is well established that the object of Rule 33 of Order 41 is to enable the appellate court to do complete justice between the parties. Its terms are very wide and in proper cases, it gives ample discretion to the court to pass any decree or make any order to meet the ends of justice. In view of this situation it cannot lie in the mouth of the appellant that this court cannot take into account the question finding regarding illegality of the Possession Receipt for want of cross appeal or cross objection by the State Government against the findings recorded by the lower appellate court. Suffice it to say, therefore, that the said finding recorded by the lower appellate court is totally wrong. In view of the above quoted notification where under which the Tahsildar is conferred with delegated

powers of Collector regarding various provisions including the provision of Section 53 of the Maharashtra Land Revenue Code. Thus, the argument on behalf of the appellant to the effect that declaration must follow the finding that Possession Receipt is illegal and devoid of any merits, cannot be considered at all. This view is forfeited by the ratio laid down by the Apex Court in the case of **Delhi Electric Supply Undertaking vs. Basanti Devi and Anr. Reported in (1999) 8 Supreme Court Cases 229.**

. It was further urged on behalf of the appellant that he was not heard before execution of Possession Receipt or Kabje Patti. However, this argument is also without any substance because admittedly the notice was issued by Tahsildar on 21.7.1980 Exh.45 to him and it was replied by the Appellant on 30.7.1980, as the father of the appellant expired on 8.3.1980. Therefore, the record is clear enough to show that the land resumed to the Government in the year 1968 itself because the father of appellant had committed breach of condition under which it was granted to him. The said order was not

challenged by the father of the appellant and since then the land vested in the Government. In this situation, therefore, it is also to be noted that by an Order dated 30.1.1968 it was observed that the condition was breached by the father of the appellant and the said order cannot be challenged by filing the present suit dated 23.9.1981 at all. In any case, once the land is vested in the Government, taking possession of the land was merely a formality and the said possession panchanama does not affect the appellant, as the appellant himself was not in possession, as admitted by him in his Complaint and well as oral evidence.

11. Under these circumstances, I hold that the proprietary right of the land was already vested in the Government when the condition attached to the tenure was breached by the father of the appellant in the year 1968 and therefore, declaration to that effect that the possession receipt was illegal would not amount to conferring title of the land to the appellant.

12. For the reasons recorded above, I have no doubt whatsoever that the appeal has no merits and deserves to be dismissed and stands dismissed. Under the circumstances no order as to costs.